

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

GBS PRINTED PRODUCTS SYSTEMS, INC.,
A DIVISION OF GBS CORPORATION¹

Employer

and

CASE NO. 8-RC-15942

TEAMSTERS LOCAL UNION NO. 92, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

¹ The Employer's name is as stipulated in Board Exhibit 2.

² The Petitioner's name is as reflected on the Petition.

³ The Employer has filed a brief that has been carefully considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse employees, maintenance employees and warehouse drivers and leadmen at the Employer's North Canton, Ohio facility but excluding all office clerical employees, the clerical assistant and professional employees, guards, and supervisors, as defined in the Act.

There are approximately 23 employees in the unit found to be appropriate.⁴

The Petitioner amended its petition at the hearing and seeks to represent a unit of “[a]ll full-time and regular part-time warehouse employees, maintenance employees, and all warehouse drivers, excluding all lead men, office clerical employees and professional employees, guards, and supervisors as defined in the Act.”

The sole issue presented at the hearing was whether the Employer's leadmen are statutory supervisors under the Act. The Petitioner contends the leadmen are statutory supervisors and thus must be excluded from the unit while the Employer asserts they are employees and therefore included in the unit. Three lead positions, those in the “Cole” department, shipping/packing and second shift are currently filled by Jack Warren, Terry Libby and John Treharne, respectively. The fourth lead position, which is in the “pulling” department, has not yet been filled.

At the hearing the parties agreed the issue of supervisory status concerned the three filled positions. In his brief, the Employer notes, for the first time, that the matter in controversy also

⁴ At the hearing the parties agreed that the clerical assistant is excluded from the unit. There being no record evidence to the contrary, I accept the agreement of the parties and shall exclude the clerical assistant from the unit.

includes the status of the unfilled pulling department leadman position. Although no evidence was taken at the hearing directly as to the duties and responsibilities of this position, the record is clear that the duties and work activities performed by the individuals holding the three filled lead positions are similar [in nature] to each other. Considering the nature of the Employer's facility and the type of work performed I have concluded that the duties and responsibilities of the unfilled lead puller position are similar to those of the three leadmen. This decision, therefore, determines the status of all lead positions in the warehouse.

At the hearing, one witness, Dave Hoskinson, the distribution manager of the North Canton facility, testified at the request of the Employer. The Petitioner called three employee witnesses: Bonnie Schulze, Holly Nelson and Dawn Schafer. The leadmen did not testify.

I. The Facts

The Employer, GBS Printed Products System, Inc. is an Ohio corporation that sells and distributes printed products such as forms and documents from a warehouse in North Canton, Ohio.. At the warehouse, orders are received and employees called receivers unload the trucks, check the products in and store them. When orders are received from clients for warehoused products the items are pulled from storage, packed and shipped out. In addition to receiving, checking and shipping the printed products warehouse workers also take calls from customer service representatives regarding the status of any shipments and perform related clerical work.

Dave Hoskinson is the distribution manager at the center and has overall responsibility for its operation. He has held the position for three years. Two assistant supervisors, Cory Laudermilk and Mike Kimmel report to Hoskinson and have responsibility over the day to day operations of the warehouse. I find that Hoskinson, Laudermilk and Kimmel are supervisors within the meaning of the Act.

Laudermilk and Kimmel have responsibility over several departments in the warehouse. The receiving department has two employees whose duties consist of unloading trucks, breaking material down, verifying it and filling out paperwork. There is no leadman in this department and these employees report directly to Kimmel. The pulling department consists of 3 employees who are responsible for pulling products off the shelf and getting them ready for shipment. No leadman has been assigned to the department as of this date. The Cole group has five employees including leadman Jack Warren. The unit has pullers, shippers and packers and is responsible for serving one of the larger customers of the Employer. The shipping/packing department also has about five employees including leadman Terry Libby. The shippers are responsible for getting the orders through the manifest system and ready for delivery by truck. The employer also has a second shift consisting of leadman John Treharne and three other employees who perform receiving, shipping and pulling duties.

The leadman position is relatively new, having been created two years ago. It was implemented to improve the flow of goods in each department. Prior to the appointment of leads the employees in each of the departments often were taken away from their pulling, shipping and receiving duties in order to answer telephone questions and doing related clerical work from the employer's customer service representatives related to client orders. These telephone and clerical duties are now primarily performed by the lead in each department. Cordless phones are often used by the leads.

It is undisputed that the leadmen continue to work on the warehouse floor. Estimates as to the amount of time each one does warehouse work varies. Hoskinson testified these individuals perform unit work approximately 90% of their time (with about 40%-50% of that time spent responding to inquiries from the customer service representatives) while employees

Bonnie Schulze and Dawn Shafer testified respectively that about 5-10% and 30-40% of the leadmen's time was spent on the floor doing picking, pulling and packing work.

The warehouse itself has only two offices with one of them belonging to Hoskinson. The other office is used by the assistant supervisors, leadmen and on occasion employees to make phone calls. Leadman Warren has a desk, light and telephone under a rack in the warehouse from where he makes his phone calls and performs related work.

II. ANALYSIS

Section 2(11) of the Act defines “supervisor” as follows:

“any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

The Board has consistently found that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status on the employee, provided that the authority is exercised with independent judgment and not in a routine matter. **Pepsi-Cola Company**, 327 NLRB No. 183 (1999); **Providence Hospital**, 320 NLRB 717 (1996); and **Bowne of Houston, Inc.**, 280 NLRB 1222, 1223 (1986). It is also well established that the burden of proving supervisory status rests on the party asserting such status. **Billows Electrical Supply of Northfield, Inc.**, 311 NLRB 878 (1993) and **The Ohio Masonic Home, Inc.**, 295 NLRB 390 (1989).

In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are "vested with genuine management prerogatives" and lead persons who are protected by the Act even though they perform "minor supervisory duties." **Providence Hospital**, *supra* at

725. In each case presenting a supervisory issue, the Board must "differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact." Ibid. at 725.

In applying the traditional criteria for the establishment of supervisory status to the facts of the instant case, I find for the reasons stated below that the leadmen are not supervisors within the meaning of Section 2(11) of the Act and should be included in the unit.

The record in this case reveals the leadmen have no authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward or independently discipline other employees or to effectively recommend any of these actions. They are hourly paid workers and continue to spend a significant portion of their time working on the floor alongside other warehouse employees. When performing their duties the leadmen also perform various clerical functions. It is somewhat unclear as to whether they use one of the offices on the warehouse floor to make telephone calls to customer service representatives and perform other related duties or have a desk and work area to perform these functions. In either case the duties performed by them are consistent with their warehouse duties and do not elevate them to supervisory status. Prior to the creation of the lead position these were duties previously performed by all employees on the floor.

The leadmen take their direction from one of the three acknowledged supervisors and do not exercise independent judgment. They have no independent authority to hire or to effectively recommend such action. Although the record reflects they may make comments to management about employment applicants, actual hiring is only done after interview of the employment

applicants by Hoskinson or one of the assistant supervisors. Leadmen do not interview applicants.

Leadmen have no authority to discharge, suspend or otherwise discipline employees or to effectively recommend such actions. Corrective action reports and exit reports all contain signatures of a member of the management team. It is clear from the record that when instances have arisen to warrant punitive action against employees, these matters have been referred by the leadmen to management for investigation and resolution. Employee Nelson testified to one instance where leadman Warren told her to sit and wait for assistant supervisor Laudermilk to talk to her about her failure to perform certain job functions. After a meeting with Laudermilk the corrective action report issued to Nelson was signed by both Kimmel and Laudermilk.

The actual assignment of work is done by one of the three supervisors and the lead men are limited to only shifting employees around on the floor to insure an orderly flow of work. The work done by the employees at the facility is routine and repetitive in itself, consisting of receiving, storing and shipping goods. The actions of the lead men as to shifting employees to various jobs merely amounts to a routine work decision and does not involve an exercise of independent judgment. It is also clear that any problems arising out of the actions of the leadmen in this regard are brought to the attention of management for resolution. **Clark Machine Corp., 308 NLRB 555 (1992); and J.C. Brock Corp., 314 NLRB 157 (1994).**

Leadmen have no authority or control regarding employee pay, overtime, granting of time off, sick time approval, or the processing of time cards and records. Their actions as to these matters are purely clerical and ministerial and under the direction of one of the three supervisors. The record establishes that pay rates are set by Hoskinson or one of his assistants. The decision to work overtime is made by one of the above-noted supervisors who use the

leadmen as conduits to advise employees of dates and hours to be worked. Employee Nelson testified that Warren had told her when to work overtime in the past even before he had been elevated to the leadman position. Similarly, employee requests for sick leave and time off, although reported to the leadmen are ruled upon by one of the supervisors. This is illustrated by testimony from employee Nelson who noted that she went to leadman Warren to request time off and was advised to talk to assistant supervisor Lauder milk. With respect to the approval of sick, personal or vacation time off, there is no evidence that the leadmen's acknowledgment that an employee was taking time off to which they were entitled amounted to the exercise of independent judgment. **North Jersey Newspapers, 322 NLRB 394, 395 (1996).**

The record reveals that time cards require the signature of Hoskinson or one of the assistant supervisors. The leadmen initial each card but this act is just a verification that each employee has correctly reported his time. Any corrective action regarding absenteeism, tardiness or similar issues are resolved by one of the three supervisors. The fact that lead persons initial employees' time cards is merely a reportorial function and not indicative of supervisory status. **Electrical Specialities, Inc., 323 NLRB No. 122 (1997); Clark Machine Corp., supra at 556; and John H. Hansen Co., 293 NLRB 63 at 64 (1989).**

Performance appraisals of employees are done on an annual basis by one of the three supervisors and not the leadmen. The leadmen's responsibilities as to employee evaluations are minimal and display no independent judgment but rather is more in the nature of a reportorial function. They may discuss the actions of employees with the supervisors and on occasion have prepared handwritten evaluations in pencil but the final decision as to an employee's evaluation rests with one of the supervisors. Hoskinson testified that he and the assistant supervisors may review the leadmens' comments but they make the final determination and write the final

appraisal. Leadmen are not present at the performance appraisal meetings with employees. The Board has ruled that for evaluations to constitute evidence of supervisory status they must effectively recommend personnel action. **Beverly Enterprises--Ohio d/b/a Northcrest Nursing Home, 313 NLRB 491 (1993); and Plastics Industrial Products, Inc., 139 NLRB 1066 (1962).** Here the weight of the evidence fails to establish that the actions of the leadmen with respect to employees' performance appraisals rise to the level of supervisory status.

The Employer has regular meetings of its management staff and on occasion the leads are included in the meetings. There is no evidence that the leadmen exercise any independent judgment, make management decisions or effectively make such recommendations at these meetings. Their presence is only to supply information to management about the conditions on the work floor and then to act as a conduit and take information back to the employees. This fact was made obvious when employee Nelson testified that she and other employees had a meeting with leadman Libby the day after he had met with the supervisors. Libby discussed several issues including punctuality and told employees he had met with management the night before and wanted to let everyone know what was going on. According to Nelson he used a little notebook during the meeting. Similarly, Hoskinson noted that after one meeting he had with the leads he directed that a memo be sent to employees reflecting the matters discussed. Leadman Warren relayed the matters discussed to employees in a meeting he held with them. It is well settled that in similar situations where employees attend management meetings and serve only as conduits for the flow of information from management to the employees, without more, supervisory status does not attach. **Hausner Hard-Chrome of KY, Inc., 326 NLRB No. 36 (1998).**

Accordingly, based on the foregoing and the record as a whole, I find that the three leadmen are not supervisors within the meaning of Section 2(11) of the Act. Thus, I find that the leadmen are appropriately included in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Teamsters Local Union No. 92, affiliated with the International Brotherhood of Teamsters.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a

list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **October 13, 1999**.

Dated at Cleveland, Ohio this 29th day of September 1999.

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

177-8560-0100